

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Charleston Division**

Nelson L. Bruce,)	
)	
Petitioner,)	Civil Act. No. 2:19-cv-02854
)	
v.)	
)	
Bank of America, N.A.; Wilmington)	
Savings Fund Society, F.S.B; and)	
Carrington Mortgage Services, LLC,)	
)	
Respondents.)	
)	

**RESPONDENT BANK OF AMERICA, N.A.’S RESPONSE
IN OPPOSITION TO PETITIONER’S MOTION TO AMEND PLEADINGS**

BANA hereby objects to the motion to amend pleadings filed by Petitioner Nelson L. Bruce (“Petitioner”). Because the proposed amendment to the Petitioner’s petition to confirm arbitration award is futile, the motion to amend should be denied.

BACKGROUND

In the motion to amend, Petitioner attempts to assert two frivolous damages claims against the U.S. Magistrate and District Court Judge for this action. Nothing in the motion to amend filed by Petitioner provides any good faith basis for amendment of the pleadings to make the Magistrate and District Court Judge parties to this action. (Doc. 34, Mot. to Am. at 7-8.) Additionally, the Petitioner attempts to create a breach of contract claim arising from the alleged arbitration agreement giving rise to his purported “arbitration award.” (*Id.* at 8-9.)

ARGUMENT

In the Fourth Circuit, “leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.” *Laber v. Harvey*, 438 F.3d 404, 426-27

(4th Cir. 2006) (quoting *Johnson v. Oroweat Food Co.*, 785 F.2d 503, 509 (4th Cir. 1986)). Here, the motion to amend to make the Magistrate and District Court Judge defendant-parties for this action is frivolous. Specifically, the doctrine of judicial immunity prevents the Petitioner from asserting claims against the Magistrate and District Court Judge because determining the merits of the Petitioner's petition to confirm arbitration award is a traditional judicial function that triggers the protections of judicial immunity under federal law. *See Jackson v. Houck*, No. 05-7769, 2006 WL 1344807 (4th Cir. 2006) (holding that district court judge denying Rule 60(b) motion was entitled to absolute judicial immunity for denying motion as moot).

Further, Petitioner's attempt to amend his petition to state a liability claim for breach of contract is likewise futile. First, nothing alleged in the motion to amend indicates that either the Magistrate or District Court Judge were parties to any contract with Petitioner. Second, the Petitioner's demand for trebled damages for his breach of contract claim is not supported by South Carolina common law. *See Williams v. Riedman*, 529 S.E.2d 28 (S.C. Ct. App. 2000) ("Under a breach of contract claim, a party's damages are limited to those under the contract, and no tort remedies are available, including punitive damages."). Finally, the amendment of the petition to add a breach of contract claim is also futile because there is no written and enforceable arbitration agreement between BANA and the Petitioner for the reasons stated in BANA's objection to the petition to confirm arbitration award.

CONCLUSION

Because the amendments to the petition that the Petitioner proposes are all futile, the motion to amend should be denied.

Respectfully submitted on this 13th day of March, 2020.

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/s/ Brian A. Calub
Brian A. Calub (Fed No. 9836)
McGuireWoods LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202-2146
Tel: (704) 343-2009
Fax: (704) 373-8844
Email: bcalub@mcguirewoods.com

Counsel for Respondent Bank of America, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2020, the foregoing *Respondent Bank of America, N.A. 's Response in Opposition to Motion to Amend Pleadings* was filed via the court's CM/ECF system and served upon the following parties by first class U.S. Mail with postage prepaid or the Court's CM/ECF system as follows:

Nelson L. Bruce (via First Class U.S. Mail)
144 Pavilion Street
Summerville, SC 29483
Pro Se Plaintiff

G. Benjamin Milam (via CM/ECF)
Bradley
214 North Tryon St., Suite 3700
Charlotte, NC 28202
*Counsel for Respondents Wilmington Savings
Fund Society, F.S.B; and Carrington Mortgage Services, LLC*

/s/ Brian A. Calub
Brian A. Calub (Fed No. 9836)